


CITY OF CONCORD
POLICY MEMORANDUM

SUBJECT: City Street Tree Removal

DATE: December 8, 2010

BY: Chip Chesley, PE, General Services Director
Paul E. Gendron, LLS, City Surveyor

APPROVED: 
Thomas J. Aspell, Jr., City Manager

1. PURPOSE.

This policy establishes basic guidelines for the appropriate removal, cutting down, and related trimming of street trees by City employees and revises the policy memorandum of the same subject dated February 17, 1999. See Section 3. Definitions. A. for the definition of a City Street Tree.

The purpose of the policy is to establish controlled, effective, and acceptable measures in order to provide for public safety, public improvement, and public involvement. The policy identifies duties, responsibilities, and procedures, and also provides a means through which citizens and property owners are notified of pending or emergency tree removal actions by the City.

2. BACKGROUND.

The City of Concord often receives requests to remove or trim a tree that is located adjacent to or within a public highway right-of-way.

Many trees located within a public highway right-of-way belong to and are "owned" by the adjacent property owner. In most cases, the City only has a right-of-way easement for the street. The right-of-way's easement status allows and obligates the City to trim or remove any tree in the right-of-way if there is a need to do so for safety issues or road purposes. The City is not allowed to damage or remove any tree unless it is necessary for safety issues or road purposes. Road purposes include, but are not limited to road construction, drainage facilities, road maintenance, improving driver sight distance, and removing hazardous trees that endanger the traveling public.

If the tree is located within a public highway right-of-way easement and is a hazard to an adjacent private property, the city does not have a duty to remove it, and therefore, has no liability if damage occurs, unless the City performed some action that caused the tree to be a

hazard in the first instance. The responsibility for the hazardous tree lies with the adjacent property owner, the legal "owner" of the tree.

3. **DEFINITIONS.**

- A. ***City Street Tree.*** A tree situated within the limits of public highways, roads, or streets, whether the trunk is situated entirely within the public highway, road, or street, or partially located within the public highway, road, or street. The designation "city street tree" is limited to identifying the potential City responsibility for maintenance or liability as the trustee of the public highway; it does not refer to the "ownership" of the tree, as that is determined by the fee ownership of the soil where the tree is located. Some public highways, roads, or streets are easements and therefore "owned" by the abutting property owner.
- B. ***Private Tree.*** A tree not situated within the limits of public highways, roads, or streets, is located entirely on private property, and therefore "owned" by and the responsibility of the private property owner. A private tree is one where no portion of the trunk is situated within the limits of public highways, roads, or streets, however, branches or foliage may actually overhang into the public highway, road, or street.
- C. ***Hazardous Tree.*** Pursuant to NH RSA 231:145, the City may declare any tree, either alive or dead, situated within the limits of highways, roads, or streets, to be a public nuisance by reason of unreasonable danger to the traveling public or spread of tree disease. In addition, private trees, either alive or dead, situated adjacent to the limits of public highways, roads, or streets, can be declared a public nuisance by reason of danger to the traveling public or spread of tree disease. The private property owner will be put on notice by the City Surveyor and urged to remove the tree as soon as possible to avoid any injuries to the traveling public or property damage to the public roadway and infrastructure. The City could consider the abutting property owner liable, pursuant to NH RSA 236:39, for any injuries or damages caused by the hazardous tree.
- D. ***Routine Removal.*** Pursuant to NH RSA 231:145 and 231:150, the programmed cutting and removal of all trees situated within the limits of city maintained highways, roads, or streets, either alive or dead, that may cause damage or pose a safety hazard to such highways or to the traveling public, or due to the threat of the spreading of tree disease; provided however that no tree which has a circumference of 15 inches or more at a point 4 feet from the ground shall be removed in the absence of notice to the abutter in the same manner as provided in RSA 231:145 and 231:146, except when the delay entailed by such notice would pose an imminent threat to safety or property damage to the public roadway and infrastructure. It also includes trees which will become hazardous to the traveling public or the public infrastructure in the near future.
- E. ***Emergency Removal.*** Pursuant to NH RSA 231:145, the un-programmed cutting and removal of hazardous trees, situated within the limits of City maintained highways, roads, or streets, which pose an immediate threat or unreasonable danger to safety, the traveling public, or the public infrastructure.

- F. ***Special Removal.*** The programmed cutting and removal of healthy trees situated within the limits of City maintained highways, roads, or streets, by request of an abutting property owner, for a construction or improvement project. This class of removal will be conducted at the expense of the abutting property owner. The City has no duty or requirement to assist an abutting property owner unless the tree is an immediate threat to safety, the traveling public, or the public infrastructure.

4. **RESPONSIBILITY FOR TREE REMOVAL.**

The Mayor of the City of Concord has designated the following City employees to act on behalf of the City for the purpose of making decisions related to the removal of city street trees:

- A. ***Routine Removal*** – ~~the Grounds Superintendent.~~
- B. ***Emergency Removal*** – ~~the Park Supervisor or its designee.~~
- C. ***Special Removal*** – the Director or Deputy Director of General Services.

5. **UTILITY COORDINATION.**

The City will also attempt to use the services of the public utility companies. Pursuant to NH RSA 231:145, the City may require of the public utilities owning lines which pass through or near a tree or trees, which are condemned for removal as a public nuisance, to assist in their removal at their expense by either the temporary removal of their lines or by causing to be removed at their expense the top portion of said tree or trees from a point below their lines.

6. **PROCEDURES FOR TREE REMOVAL.**

When notified of a potentially hazardous tree, City personnel will inspect the tree to determine if there is in fact any deterioration of the tree, or its foundation, that would make the tree hazardous or an immediate threat to the traveling public or public infrastructure. In conjunction with the tree inspection, City personnel will attempt to determine the location of the right-of-way of the public highway, road, or street in relation to the location of the tree, to determine whether it is a city street tree or a private tree. City personnel will also attempt to determine the status of the public highway, road, or street to determine whether it is an easement or if the City owns the right-of-way in fee.

If it is determined that the tree is a city street tree, and is therefore located within a public right-of-way, there are potentially four scenarios that need to be reviewed, depending on whether the City owns the right-of-way in fee, or holds the right-of-way as an easement. See Exhibit A.

If the City owns the right-of-way in fee and the tree is hazardous or an immediate threat to the traveling public or public infrastructure, City personnel will remove the tree, pursuant to NH RSA 231:145 and 231:146, or otherwise resolve the safety issue as soon as it is feasibly possible. If the tree is not hazardous or an immediate threat to the traveling public or public infrastructure,

City personnel will not spend public funds for the tree's removal. Also, the abutter will not be allowed to remove the tree without permission from the City.

If the City holds the right-of-way as an easement and the tree is hazardous or an immediate threat to the traveling public or public infrastructure, City personnel will remove the tree, pursuant to NH RSA 231:145 and 231:146, or otherwise resolve the safety issue as soon as it is feasibly possible. If the tree is not hazardous or an immediate threat to the traveling public or public infrastructure, City personnel will not spend public funds for the tree's removal. Also, the abutter, as the owner of the tree, will be informed that they may remove it at their cost.

If it is determined that the tree is not a City street tree, and therefore a private tree located entirely on private property, and the tree is deemed to be hazardous or an immediate threat to the traveling public or public infrastructure, the abutting property owner will be informed and put on notice that it is their responsibility to resolve the safety issue and have the tree removed as soon as possible. The property owner will also be informed by the City Surveyor that they could be considered liable, pursuant to NH RSA 236:39, for any injuries or damages cause by their failure to remove the hazardous tree. The City may, however, prune or trim any branches overhanging into or across the right-of-way that are a hazard to the traveling public or public infrastructure. This selective pruning or trimming shall be done in a workmanlike manner so as not to further damage the tree, and can be conducted within the entire public right-of-way and up to the right-of-way sideline without trespassing onto private property.

7. NOTIFICATIONS.

In order to minimize the degree of public concern that may arise over the removal of a tree, the City will make every reasonable effort to notify citizens and the public of impending or necessary tree removals according to the following protocol:

- A. ***Routine Removal*** – Pursuant to NH RSA 231:145, 231:146, and 231:150, notice to the property owner shall be given by delivery at his place of residence or by sending by registered mail to his last known address. However, no such notice shall be required when a tree has a circumference of less than 15 inches at a point 4 feet from the ground.
- B. ***Emergency Removal*** – Pursuant to NH RSA 231:145 and 231:146, notice to the property owner shall be given by delivery at his place of residence or by sending by registered mail to his last known address. However, no such notice shall be required when the delay entailed by such notice would pose an imminent threat to safety or property.
- C. ***Special Removal*** – notify the abutting property owner if necessary and attach a notice to the tree identifying its impending removal date and the reason thereof.

It is recognized that given the nature of emergency conditions such as, but not limited to, a hurricane, blizzard, tornado, ice storm, or wind storm, factors such as the time of day of the emergency and the number of calls for service received, notifications might not be conducted until after the emergency situation passes.

8. CITY LIABILITY.

City employees must be aware of and at all times attempt to prevent potential City liability in their exercise of this policy.

9. REMEDICATION.

Cleanup of tree sections and debris by City staff may occur during *Routine Removals* or *Emergency Removals*, pursuant to NH RSA 231:145, 231:146, and 231:150.

However, it should be recognized that depending on the status of the public highway, road, or street, more specifically whether the highway, road, or street is an easement or is owned in fee by the City, the abutting property owner may own the tree and may wish to retain possession of the sections and debris. During *Routine Removals*, the abutting property owner should be consulted prior to any work to determine which trees they would prefer to keep. Tree sections and debris left for use by the abutting property owner shall not remain within the limits of the public highway, road, or street such that they will interfere with the viatic use of the highway, road, or street.

During *Emergency Removal* situations, cleanup by City staff will occur as soon as practical after the emergency has passed. Given the nature of the situation and the number of service locations, material may stay on-site for several days until it can be removed by City effort, unless the abutting property owner wishes to retain possession of the sections and debris. Tree stems may remain intact and stumps may be left in place until programmed removal with the appropriate equipment.

During *Special Removals*, the responsibility for the removal of the tree will usually be the abutting property owner. Unless the abutting property owner wishes to retain possession of the sections and debris, they will bear the cost of removal from the site.

10. AUTHORIZATION.

The Concord City Council originally approved this Policy at its April 12, 1999, regular meeting.

This Policy Memorandum supersedes all prior policy statements on this subject.

EXHIBIT A
HAZARDOUS TREE FLOW CHART

